

GALLATIN COUNTY CONSERVATION AND PARKS

Testimony on HB 249
Michael Harris, Director
Gallatin County Conservation and Parks

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Chairman Lake and Distinguished Representatives,

I want to thank you for the opportunity to testify on House Bill 249. I have closely reviewed the provisions of HB 249 as drafted by Representative Stahl. On behalf of the Gallatin County Commission I must express our strong opposition to this bill.

First and foremost, this bill as drafted would have a huge financial impact on Gallatin County. As you may be aware the people of Gallatin County have approved two Open Space Bonds for a total of \$20 million dollars. With that \$20 million we have leveraged it with other public and private entities to conserve roughly 45 square miles of prime agricultural lands and wildlife habitat.

The legislation attempts to tax conservation easements by classifying them as "Class 4" property. This provision alone has the potential to cost the taxpayers of Gallatin County close to \$1 million annually. Gallatin County is only one local government that would be facing this problem; Ravalli County, Lewis and Clark County and Missoula County have also passed Open Space Bonds to purchase conservation easements.

Additionally, HB 249 would have a fiscal impact to the Montana Department of Fish Wildlife and Parks as well as the Department of Transportation and the Department of Revenue. The Department of Revenue maybe the biggest agency impacted by this bill. The Department of Revenue would have to hire out all of the qualified appraisers in Montana and likely the surrounding states in order to appraise all 1500 individual conservation easements in Montana. There are currently only three or four qualified appraisers in Montana that can value a conservation easement and they don't work cheap.

As of the morning of the hearing we were not able to see a completed Fiscal Note on the bill and believe that any decisions on this bill should be delayed until the fiscal impact is calculated.

The real issue with this bill is not only the fiscal impact to both the state and local governments, it is to the issue of fairness. Why would we want to tax conservation easements? To better understand this issue it is necessary to explain what a conservation easement is.

In Montana property tax is based on the assessed value of the property multiplied by an established rate for individual tax classifications. Those tax classifications are based on the use of the land. If it is agricultural lands it receives one rate, residential another, commercial another. The proposal in HB 249 is to class conservation easements as Class 4 property.

Land is real property, mineral rights are real property, water rights are real property, cattle are real property, tractors are real property, houses, barns and factories are real property. A conservation easement is not however real property, it is an interest in the use of real property.

The same can be said for the right to access private land. The right of public access, or the right to hunt and fish, are not real property rights, they are interests in the use of real property. The right to hunt and fish on private property has a monetary value. The right to hunt and fish can be leased or sold to other parties, but we don't tax them as property as they are not real property. They are taxed as income as until those rights are exercised.

An individual can own an interest in a company that controls the use and operations of the company, but the interest in the company isn't taxed as real property. The real property, land, buildings, equipment, etc., owned by the company is taxed as real property and any income derived from the company is taxable, but the interest in the company is not a taxed.

The same is true for a conservation easement. It is an interest in the use of property but not the ownership of real property. When the county enters into a conservation easement agreement with a private landowner they do not receive real property. The private land owner does not transfer ownership of any real property rights. In an easement all real property rights are retained in the original parcel. The county cannot resell the anything, cannot transfer anything, cannot develop or use any rights or interests for their own benefit. This is why conservation easements are not taxed as real property.

To start taxing conservation easements as real property would mean that the use of the real property had changed, which it hasn't. The use remains the same and the tax classification remains the same as the use of the property.

In many instances land with conservation easements in place pay more in taxes than property unrestricted. I have included a small map to my testimony that outlines an example of this. You will see two properties of approximately the same size. The one in blue owned by the Brainard family is classified as Rural Agricultural. The property contains no divisions and no structures and has no restrictions on use. The annual taxes paid on this property are approximately \$912.84.

The second is owned by the Crawford family (show as cross hatched) and is restricted by a conservation easement. The tax classifications on the property range from Rural Residential to Rural Vacant Land. The property has nine separate parcels in it and contains three homes. The terms of the easement allow the construction of agricultural structures and to repair, maintain or replace the existing three homes on the property. The annual taxes on the property are approximately \$7499.

To tax conservation easements would be basing our tax on the potential use of the property rather than the actual use of the property. If we go down this road it would be the first step down a slippery slope towards taxing all land based in its highest and best use potential, not its current use. This would open up the door to tax hunting rights, fishing rights, and mineral rights based on the projected value of the rights even if they are not being used.

If you have any questions or comments please feel free to contact me at: Michael Harris, Gallatin County Legislative Liaison, 311 West Main, Room 304, Bozeman, MT 59715, Email: mike.harris@gallatin.mt.gov, Phone: 406/580-3029.

Again, thank you for your consideration in this important matter and we urge a "Do Not Pass" on HB 249.

Sincerely,
Michael Harris



